

Assembly Bill No. 1196

CHAPTER 268

An act to amend Sections 361.3 and 387 of the Welfare and Institutions Code, relating to juvenile law.

[Approved by Governor August 9, 1997. Filed with
Secretary of State August 11, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1196, Shelley. Juveniles: placement of dependent children.

Under current law, a child may be determined to be a dependent child and removed from the physical custody of his or her parents. In those cases, the child may be placed with a relative if appropriate. In determining whether a placement is appropriate, consideration must be given to certain factors.

This bill would include among those factors the ability of the relative to facilitate implementation of all elements of the case plan and to provide a permanent home for the child if the child cannot return home, whether any person residing in the home has a history of prior violent criminal acts or has been held responsible for child abuse or neglect, and the safety of the relative's home. This bill would require a county social worker to conduct a safety assessment of the relative's home.

Since county social workers would be required to consider additional matters with respect to the placement of the child and conduct a safety assessment, this bill would impose a state-mandated local program.

Existing law requires a court order changing or modifying a previous order and removing a minor from a parent, guardian, relative, or friend and directing placement in a foster home or commitment to a private or county institution, to be made only after a noticed hearing on a supplemental petition filed by a probation officer.

This bill would require, in case of placement with a relative, that the supplemental petition by the probation officer contain facts sufficient to show that placement with a relative is not appropriate. By imposing additional duties on a probation officer, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000

statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 361.3 of the Welfare and Institutions Code is amended to read:

361.3. (a) In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative. In determining whether placement with a relative is appropriate, the county social worker and court shall consider, but shall not be limited to considering, all of the following factors:

(1) The best interests of the child, including special physical, psychological, or emotional needs.

(2) The wishes of the parent.

(3) The provisions of Part 6 (commencing with Section 7950) of Division 12 of the Family Code regarding relative placement.

(4) Placement of siblings and half-siblings in the same home, if such a placement is found to be in the best interest of each of the children.

(5) The good moral character of the relative.

(6) The ability of the relative to do the following:

(A) Provide a secure and stable environment for the child.

(B) Exercise proper and effective care and control of the child.

(C) Provide a home and the necessities of life for the child.

(D) Protect the child from his or her parents.

(E) Facilitate court-ordered reunification efforts with the parents.

(F) Facilitate visitation with the child's other relatives.

(G) Facilitate implementation of all elements of the case plan.

(H) Provide a legally permanent home for the child if he or she cannot return home. However, any finding made with respect to the factor considered pursuant to this subparagraph and pursuant to subparagraph (G) shall not be the sole basis for precluding preferential placement with a relative.

(7) Whether any individual residing in the home has a prior history of violent criminal acts or has been responsible for acts of child abuse or neglect. However, this paragraph shall not be construed to provide independent grounds for access to the child abuse central index.

In this regard, the Legislature declares that a physical disability, such as blindness or deafness, is no bar to the raising of children, and a county social worker's determination as to the ability of a disabled relative to exercise care and control should center upon whether the relative's disability prevents him or her from exercising care and control. The county social worker shall ask the parents if there are any relatives that should be considered for placement. This inquiry shall not be construed, however, to guarantee that the minor will be placed with any person so identified. The county social worker shall further investigate the existence of other relatives for possible placement and document these efforts in the social study prepared pursuant to Section 358.1. However, this investigation shall not be construed as good cause for continuance of the dispositional hearing conducted pursuant to Section 358.

(8) The safety of the relative's home. For purposes of this paragraph, the county social worker shall conduct a direct assessment of the safety of the relative's home. The information obtained as a result of this assessment shall be documented by the county social worker in the child's case record.

(b) In any case in which more than one appropriate relative requests preferential consideration pursuant to this section, each relative shall be considered under the factors enumerated in subdivision (a).

(c) For purposes of this section:

(1) "Preferential consideration" means that the relative seeking placement shall be the first placement to be considered and investigated.

(2) "Relative" means an adult who is a grandparent, aunt, uncle, or sibling.

(d) Subsequent to the hearing conducted pursuant to Section 358, whenever a new placement of the minor must be made, consideration for placement shall again be given as described in this section to relatives who have not been found to be unsuitable and who will fulfill the minor's reunification or permanent plan requirements. In addition to the factors described in subdivision (a), the county social worker shall consider whether the relative has established and maintained a relationship with the minor.

(e) If the court does not place the child with a relative who has been considered for placement pursuant to this section, the court shall state for the record the reasons placement with that relative was denied.

SEC. 2. Section 387 of the Welfare and Institutions Code is amended to read:

387. An order changing or modifying a previous order by removing a minor from the physical custody of a parent, guardian, relative, or friend and directing placement in a foster home, or

commitment to a private or county institution, shall be made only after noticed hearing upon a supplemental petition.

(a) The supplemental petition shall be filed by the probation officer in the original matter and shall contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the rehabilitation or protection of the minor or, in the case of a placement with a relative, is sufficient to show that the placement is not appropriate in view of the criteria in Section 361.3.

(b) Upon the filing of the supplemental petition, the clerk of the juvenile court shall immediately set the same for hearing within 30 days, and the probation officer shall cause notice thereof to be served upon the persons and in the manner prescribed by Sections 335 and 337.

(c) An order for the detention of the minor pending adjudication of the petition may be made only after a hearing is conducted pursuant to Article 7 (commencing with Section 305).

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

